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FEDERAL COMMUNICATIONS COMMISSION
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VIA FACIMILE

Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

OT 97-82

Re: C Block Restructuring – The Public Not Individual Interests

Dear Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani:

The Commission's decision on Petitions for Reconsideration of the C block refinancing order should protect, honor and respect the public interest in fair, impartial auctions not the interests of individual companies that now clamor for government relief. The Commission must consider its decision in the context of the C block auction and the consequences of that auction – not only on those now seeking relief – but on the bidders who left the auction based on their reasonable belief that the FCC would follow and enforce its own rules. Requests for continued changes to the Second Report and Order put the certainty and fairness instilled by that order in jeopardy.

I. Voluntary Bidding in the Auction Forced Many Bidders Out of Business

Requests for reconsideration must be evaluated against the fundamental fairness of changing the rules of the auction after many bidders relied on the FCC to enforce those rules. AirGate Wireless encourages the Commission to consider:

- the rules of the auction were known to all including the condition for prompt payment.
- over 150 small business entrepreneurs left the C block auction with no licenses because they were outbid by current licensees and relied on the FCC's commitment to enforce its rules.
- \$266 Million was deposited by and returned to top bidders who left the auction. This money could have gone to the U.S. taxpayer.

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- If the bid prices had not reached the final levels in the C block, many of these now defunct bidders would be creating new jobs and contributing to the economic growth in the wireless industry. Their businesses failed during the auction based on the actions of other bidders that now seek to change the rules.
- Many of bidders in the auction were willing to pay more than the proposed net present value of license prices proposed by certain C block licensees.
- The majority of the debt from the C block auction (66%) is carried by only 3 bidders – 2 of whom are already in bankruptcy and are unlikely to emerge to avail themselves of any options provided by the Commission.

The new Commission must evaluate all the requests as an impartial agency that honors its licensing process. This impartiality requires that the Second Report & Order be enforced.

II. A Further Deferral of the Election Date or Payments Merely Postpones Inevitable Defaults

A further deferral of license payments is unnecessary and will only postpone the inevitable default of certain licensees. There is no basis to defer the election date or the restart of license payments beyond March 31, 1998. Specifically, such requests should be rejected for the following reasons:

- By the time the license payments restart, the C block licensees will have had a full year of deferral of interest payments.
- the inability to make even minimal interest payments demonstrates the depth of the financial difficulties of certain C block licensees.
- these financial difficulties are directly attributable to the high prices bid at the auction – prices that will not change with time.
- deferral will delay a reauction that holds the most promise for delivering service to the public.
- certainty has been restored by the Commission's decision in the Second Report & Order – additional changes or deferral will reinstate that uncertainty and perpetuate an environment of continued pleas for regulatory relief.

III. If Elections are Made on an MTA Basis, Use of the DownPayment Should be Limited to the MTA in which the Election is Made

If elections are permitted to be made on an MTA basis, the use of the downpayments must be limited to those MTAs. The pre-payment option permits a pooling of downpayments towards selected licenses if that option is selected for all licenses. If this option is permitted on an MTA basis, any pooling of downpayments should be limited to the downpayment submitted

for licenses in that MTA. This restriction is reasonable since the downpayment is required as a demonstration of the licensee's ability to honor its commitments for a particular license during the auction.

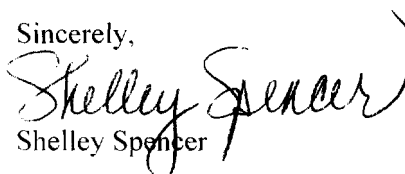
IV. Fairness Requires that A Portion of the DownPayment Be Withheld if A Restructuring Election Is Made

After the auction has ended – the winners and losers determined – licensees should not be permitted to reallocate full use of their down payments towards different licenses or more limited spectrum. This flexibility would be fundamentally unfair and inconsistent with the Commission's treatment of bidder defaults on the down payment. The Commission has imposed severe restrictions on bidder defaults. C block licenses for 19 markets were reaucted after bidder defaults. More recently, the Commission fined Carolina PCS I L.P. 5% of its second downpayment for its failure to submit a timely full down payment.

The down payment is properly viewed as a payment for a particular license. If the license is returned, the downpayment should be forfeited. Similarly, if one-half the spectrum is returned to the government, 50% of the downpayment is validly retained by the government. If spectrum is prepaid for it is fair for the government to retain 30% of the downpayment. Full use of the downpayment sends the signal that a bidder can participate in the auction, exclude other bidders through its payment, and then willing reallocate the funds after the losing bidders are excluded. This approach would permit post-auction government gaming rather than permit fair, free market forces to determine the outcome. In order for auctions to serve their efficient goal and compensate the government, bidders should not be able to game the process after the auction ends. The retention of a portion of the downpayment is far from a penalty and is an important element of auction integrity.

AirGate Wireless strongly encourages the Commission to uphold the Second Report & Order and put a stop to continued modifications of the auction rules.

Sincerely,


Shelley Spencer

cc: Ari Fitzgerald
David Siddall
Peter Tenhula
Karen Gulick
Paul Misener